

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Joint Application by SBC Communications Inc.,)	
Illinois Bell Telephone Company, Indiana Bell)	
Telephone Company Incorporated, The Ohio)	
Bell Telephone Company, Wisconsin Bell, Inc.,)	WC Docket No. 03-167
and Southwestern Bell Communications)	
Services, Inc. for Provision of In-Region,)	
InterLATA Services in Illinois, Indiana, Ohio)	
and Wisconsin)	

COMMENTS OF GLOBALCOM, INC.

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COMMENTS OF GLOBALCOM, INC.

GLOBALCOM, Inc. ("Globalcom") submits these comments concerning the above-captioned Joint Application by SBC Communications Inc. ("SBC"), Illinois Bell Telephone Company ("SBC-IL"), Indiana Bell Telephone Company Incorporated, The Ohio Bell Telephone Company, Wisconsin Bell, Inc. ("SBC-WI"), and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Illinois, Indiana, Ohio and Wisconsin filed July 17, 2003 ("Application").¹

SUMMARY

Globalcom submits these comments because its Illinois and Wisconsin facilities-based business plan is jeopardized by excessive non-TELRIC-based nonrecurring charges ("NRCs") for Enhanced Extended Links ("EELs")² SBC-IL and SBC-WI seek to impose.³ As explained herein, SBC-IL has not complied with 271 Checklist Item 2 because SBC-IL's EEL NRCs, for a

¹ *Comments Requested on the Application by SBC Communications Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Illinois, Indiana, Ohio and Wisconsin*, Public Notice, WC Docket No. 03-167, DA 03-2344 (rel. June 17, 2003).

² EELs consist of unbundled loops and transport network elements ("UNEs").

4-Wire DS1 Digital Loop to DS1 Dedicated Transport Combination - Uncollocated, which SBC-IL asserts total \$2,285.85 have (1) not been investigated, (2) are far beyond a range that a reasonable application of TELRIC would produce, (3) are over 13 times the California benchmark rates of \$173 that were recently found TELRIC compliant by the Commission, and (4) are over 240% of the rates that SBC-IL more recently claimed in the state commission's proceeding were TELRIC-compliant. Consequently, these nonrecurring rates are *per se* unreasonable. Moreover, these charges are not in the public interest because they create a significant barrier to entry that will preclude the ability of Globalcom and other facilities-based CLECs using EELs to compete in the Illinois marketplace. For similar reasons, SBC-WI has failed to comply with 271 Checklist Item 2 because SBC-WI's NRCs for EELs are not reasonable under TELRIC, are not pro-competitive, and do not encourage competition. Given these facts and circumstances, SBC-IL's and SBC-WI's 271 Applications should be denied unless SBC immediately reduces these nonrecurring rates in Illinois and Wisconsin so that they mirror California benchmark rates.

INTRODUCTION

Globalcom is one of the fastest growing privately held phone companies in the nation. Headquartered in Chicago, Illinois, Globalcom is a next generation Competitive Local Exchange Carrier (CLEC), long distance carrier and Internet Service Provider (ISP). Globalcom offers an integrated set of communication products and services.

Established in 1993, Globalcom is a facilities-based carrier with a foundation built on proven technology. Globalcom uses Nortel DMS-500 Supernode digital switches, Cisco 7500 series Internet routers, and a 100% fully redundant fiber optic backbone. While Globalcom is a

³ Globalcom takes no position as to SBC's Indiana and Ohio 271 Application.

national carrier, its core market focus is small to medium size business customers in the Illinois and Wisconsin region. This regional focus allows the Company to maximize its network and resources in its core markets. Controlled growth with profitable expansion into new markets is its growth strategy. Through an integrated set of communications products, Globalcom strives to exceed its customers' requirements for cost effective products, unparalleled network reliability and personalized customer service.

Globalcom's business is based upon offering competitive and innovative DS1 services that integrate local and long distance voice and data traffic over the same circuit to its customers. Because Globalcom is a facilities-based carrier, most of its customers are served through Globalcom's own switch. In providing its DS1 services, Globalcom must obtain EELs from SBC-IL so that Globalcom can connect its switch and facilities to its end user customers. As shown in the attached affidavit of Greg Robertson, the Chief Financial Officer and head of marketing design and product development at Globalcom, SBC is an aggressive competitor in this niche market and end users expect that that all nonrecurring charges will be waived when service is initiated.⁴ Given these marketplace realities, it is imperative that nonrecurring costs incurred in doing so are streamlined and efficient ones.⁵ The competitive nature of this market cannot withstand inefficient or inappropriate processes and costs associated with starting up service.⁶

To this end, Globalcom seeks to operate in an extremely efficient and streamlined fashion so that the nonrecurring costs it incurs are minimized.⁷ Likewise, Globalcom expects that the

⁴ Tab 4, Affidavit of Greg Robertson at 3-4.

⁵ Tab 4, Affidavit of Greg Robertson at 4.

⁶ Tab 4, Affidavit of Greg Robertson at 4.

⁷ Tab 4, Affidavit of Greg Robertson at 4.

nonrecurring charges that SBC-IL and SBC-WI assess it for the underlying EELs will be TELRIC-based, as the Telecommunications Act of 1996 (the “Act”) and a competitive market require.⁸ At this time, however, SBC’s NRCs for EELs are far in excess of forward-looking, efficiently incurred costs, and thus do not permit competition. Therefore, before SBC-IL and SBC-WI are granted 271 authority, SBC-IL and SBC-WI must offer nonrecurring EEL charges that are TELRIC-compliant, consistent with this Commission’s standards for 271 authority.

In Part I, below, Globalcom demonstrates that SBC-IL’s 271 Application should be denied because its nonrecurring EEL rates are not in compliance with the Commission’s TELRIC rules or within a range that a reasonable application of TELRIC would produce, and therefore SBC has not complied with Checklist Item 2. In Part II, Globalcom shows that denial of SBC-IL’s 271 Application is appropriate under the public interest standard since SBC’s nonrecurring EEL charges impose an insurmountable barrier to competitive entry that will prevent a competitive marketplace. In Part III, Globalcom demonstrates that denial of SBC-WI’s 271 Application is warranted for similar reasons. Finally, in Part IV, Globalcom proposes that to cure the defects in SBC-IL’s and SBC-WI’s 271 Application, SBC should immediately file revised NRCs for EELs in Illinois and Wisconsin that mirror the charges SBC assesses in California.

I. SBC-IL’S NONRECURRING RATES FOR EELS ARE NOT TELRIC-COMPLIANT (CHECKLIST ITEM 2)

Checklist Item 2 states that a BOC must provide “[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)” of the Act.⁹ Section 251(c)(3) requires LECs to provide “nondiscriminatory access to network elements on an

⁸ Tab 4, Affidavit of Greg Robertson at 4.

⁹ 47 U.S.C. § 271(2)(B)(ii).

unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . . .”¹⁰ Section 252(d)(1) requires that a state commission’s determination of the just and reasonable rates for network elements shall be based on the cost of providing the network elements, shall be nondiscriminatory, and may include a reasonable profit.¹¹ Pursuant to this statutory mandate, the Commission has determined that prices for UNEs must be based on the forward-looking total element long run incremental cost (TELRIC) of providing those elements.¹²

In past Section 271 applications, the use of rates that are not within a zone that a reasonable application of TELRIC would produce has given this Commission great cause for concern.¹³ With respect to nonrecurring rates for EELs, SBC-IL’s 271 Application is defective in this regard. Consequently, the Commission has no other recourse than to deny this application. Indeed, the strongest testament to the flawed nature of SBC-IL’s nonrecurring EEL rates comes not from CLECs or third parties, but from SBC-IL itself. In particular, late last year, SBC-IL proposed new nonrecurring rates for EELs and other UNEs, claiming that these rates reflected its TELRIC costs. These rates were far lower than the nonrecurring EEL rates it currently offers.

¹⁰ *Id.* § 251(c)(3).

¹¹ *Id.* § 252(d)(1).

¹² *See Local Competition Order*, 11 FCC Rcd at 15844-47, ¶¶ 672-78; 47 C.F.R. §§ 51.501 *et seq.* (1999).

¹³ *See, e.g., Application by SBC Communications Inc., Pacific Bell Telephone Company, and Southwestern Bell Communications Services Inc., for Authorization To Provide In-Region, InterLATA Services in California*, WC Docket No. 02-306, Memorandum Opinion and Order, 17 FCC Rcd 25650, ¶¶ 48, 54 & 71, Appendix C ¶ 24 & 45 (2002) (“*Pacific Bell California Order*”).

A. In Comparison to Other SBC states, SBC-IL's EEL Nonrecurring Charges Are Far Beyond the Range that a Reasonable Application of TELRIC Principles Would Produce.

To determine whether UNE rates are “outside the range that the reasonable application of TELRIC principles would produce,” the Commission undertakes comparisons of rates in the applicant’s state to rates it has previously found to be TELRIC-compliant in another state.¹⁴ The Commission determined that a comparison is permitted when there is a: 1) common BOC; 2) whether the two states have geographic similarities; 3) whether the two states have similar, although not necessarily identical, rate structures for comparison purposes; and 4) whether the Commission has already found the rates in the comparison state to be TELRIC-complaint or an appropriate benchmark.¹⁵ In evaluating the rates, the FCC will look to see if the rate differential between the states is based on different costs between the states. If not, there is a strong indication that the rates are not TELRIC-based and the 271 application should be rejected.¹⁶

¹⁴ See *Pacific Bell California Order*, ¶¶ 54 & 71; see also *Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, CC Docket No. 00-217, Memorandum Opinion and Order, 16 FCC Rcd 6237, ¶¶ 81 & 82 (2001) (“*SWBT Kansas/Oklahoma Order*”), *aff’d in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).

¹⁵ See *Pacific Bell California Order*, ¶¶ 32, 54, & 71; *Application by Verizon New Jersey Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Jersey*, CC Docket No. 02-67, Memorandum Opinion and Order, 17 FCC Rcd 12275, ¶ 49 (“*Verizon New Jersey Order*”); *Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶ 63 (2001) (“*Verizon Pennsylvania Order*”).

¹⁶ *Verizon Pennsylvania Order*, ¶ 55; *Pacific Bell California Order*, ¶ 71.

In this instance, the most appropriate state for comparison purposes is either California or Texas. These states satisfy all four criteria the FCC uses for comparative purposes. The three states share a common RBOC and a similar rate structure. In addition, SBC's California and Texas rates have been found to be TELRIC-compliant by the California and Texas Commissions and this Commission during its review of the respective 271 applications.¹⁷

As shown below and as further detailed in the Affidavit of Dr. August Ankum ("Ankum Aff."), the benchmark analysis demonstrates that the total nonrecurring EEL charges SBC-IL assess for a 4-Wire DS1 Digital Loop to DS1 Dedicated Transport Combination-Uncollocated¹⁸ are 13.2 and 5.2 times the amount SBC charges for these NRCs in California and Texas, respectively.¹⁹ As Dr. Ankum shows, there is no basis for this enormous disparity.²⁰ This comparison thus shows that these rates are not TELRIC-compliant and that to qualify for Section

¹⁷ See *Pacific Bell California Order* ¶ 20; *Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996, To Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354, ¶ 239 (2000) ("*SWBT Texas Order*").

¹⁸ SBC-IL's NRCs for EELs are set forth in its ILL. C.C. Tariff No. 20, Part 19, Section 20, at Sheet 4 through Sheet 6, available at http://www.sbc.com/Large-Files/RIMS/Illinois/Tariff_No._20/il201920.pdf. The ICC ordered that these rates be available on an interim basis in ICC Docket No. 98-0396. See *Illinois Commerce Commission On Its Own Motion, Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated Regarding the Filing of Tariffs and the Accompanying Cost studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Bundling Issues*, Docket No. 98-0396, Order on Reopening, at 11 (Ill. C.C. Apr. 30, 2002) ("*ICC Order on Reopening*") (ordering that SBC-IL's nonrecurring EEL rates go into effect on an interim basis); see also *Illinois Commerce Commission On Its Own Motion Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271 of the Telecommunications Act of 1996*, Docket No. 01-0662, Order on Investigation, ¶ 778 (Ill. C.C. May 13, 2003) ("*ICC 271 Order*") (ordering that the rates be subject to true-up back to the date of the Phase I order of February 6, 2003).

¹⁹ See Tab 1, Affidavit of August H Ankum, at 4 and AHA-1 at 3-7.

²⁰ See Tab 1, Affidavit of August H Ankum, at 4 and AHA-1 at 3-7.

271 approval, SBC-IL must reduce its nonrecurring UNE EEL rates substantially, so that they fall within the range that a reasonable application of TELRIC principles would produce.²¹

State	DS1 EEL NRCs	SBC Illinois EEL NRCs relative to NRCs in other states
Arkansas	\$ 523.37	437%
California	\$ 173.10 ²²	1321%
Illinois (2003)	\$ 2,285.85	100%
Illinois (SBC Proposed)	\$ 937.58	244%
Kansas	\$ 627.90	364%
Michigan	\$ 685.18	334%
Missouri	\$ 1,384.58	165%
Nevada	\$ 173.10	1321%
Oklahoma	\$ 1,018.05	225%
Texas	\$ 440.25	519%

Apart from the California and Texas benchmark comparison above, SBC-IL's nonrecurring EEL rates are excessive when compared to non-benchmark SBC states such as Michigan and those in other states in the SBC's footprint.²³ As a result, it is abundantly clear through these comparisons that SBC-IL's nonrecurring UNE EEL rates are excessive and

²¹ See Tab 1, Affidavit of August H Ankum, at 4 and AHA-1 at 3-7. While the analysis and rate comparisons concern the EEL with a 4-Wire Digital Loop to DS1 Dedicated Transport, the rate differentials are consistent with EELs of different levels of capacity. As such, the results presented here are representative of SBC's NRCs for EELs in Illinois. See Tab 1, Affidavit of August H Ankum, at n.1 and AHA-1 at n.3 and 6-7.

²² The SBC-California rates and rate structure are taken directly from page 8 of Attachment 8: Pricing, Appendix A-2 to the Interconnection agreement between AT&T and Pacific Bell which does not describe the availability of a non collocated arrangement. To the extent SBC-California does not make non-collocated arrangements available, the NRCs which are applicable to Entrance Facilities may be assessed. These charges total \$69.19 and are comprised of \$0.32 "DS1-Initial Mechanized" and \$68.87 "Connect." Total installation related NRCs would, therefore, rise to \$242.29. Even in such a scenario, SBC-IL's installation related NRCs are approximately 9.4 times the charges assessed by SBC-California.

²³ See Tab 1, Affidavit of August H Ankum, at 4 and AHA-1 at 3-7.

demonstrate that SBC-IL's rates are not at all reasonable and are not truly forward looking as the Act and the FCC require.

B. SBC-IL's Purported Demonstration to the ICC that its EEL NRCs Are Reasonable Has No Merit.

In ICC Docket 01-0662, SBC-IL made a presentation to the ICC purporting to demonstrate that its EEL NRCs fall reasonably within a range of TELRIC compliance.²⁴ SBC-IL's demonstration is, however, without merit and should be rejected.

By way of background, the ICC has never investigated SBC-IL's EEL NRCs and the ICC was concerned about the interim nature of the EEL nonrecurring rates and specifically asked SBC-IL, among other things, to demonstrate that these interim rates are reasonable.²⁵ In response, SBC-IL admitted that "SBC[-IL] EEL NRCs are [significantly] higher than the NRCs charged in either Texas, California, or Michigan,"²⁶ Recognizing this fatal flaw in its 271 application, SBC-IL attempted to show that they were reasonable by presenting a comparison that compared (a) the combined total of *both the recurring and non-recurring* charges Illinois CLECs would be assessed for new EELs over a 12-month and 24-month period with (b) the combined total of both the recurring and non-recurring charges CLECs would be assessed in Texas, California, and Michigan over the same time period.²⁷ SBC-IL submitted that the total

²⁴ See ICC 271 Order, ¶¶ 841-848; see also Tab 2, ICC Docket No. 01-0662, Phase IA Compliance Aff. of M.Silver on Behalf of SBC-IL, ¶¶ 10-14 and Revised Attachment MDS-2.

²⁵ ICC 271 Order, ¶ 777. The ICC specifically stated that Ameritech must demonstrate that the "interim rates" shown in Attachment A to the Supplement to Update Summary of Staff's Proposed Remedial Actions For Ameritech Illinois, (filed on Nov. 27, 2002) are reasonable." *Id.* Notably, that Attachment A included nonrecurring rates for EELs.

²⁶ See ICC 271 Order, ¶ 843.

²⁷ Tab 2, ICC Docket No. 01-0662, Phase IA Compliance Aff. of M.Silver on Behalf of SBC-IL, ¶¶ 10-14 and Revised Attachment MDS-2 at 2.

charges (recurring and non-recurring charges) in Illinois are less than the comparable charges in California for all three EEL scenarios, assuming the CLEC holds the EEL for 24 months.²⁸ SBC-IL also noted that in certain EEL configurations, the total charges assessed in Illinois are less than the total charges assessed in California if the CLEC holds the EELs for 12-months.²⁹ Given this and because the FCC found that SBC's rates in California satisfied checklist item 2, SBC-IL argued that Illinois nonrecurring EEL rates are reasonable and within the range of TELRIC compliance.³⁰

SBC-IL's demonstration of reasonableness to the ICC was farcical because it was not consistent with the FCC's 271 review standards. In determining whether rates fall within the range that the reasonable application of TELRIC principles would produce, the FCC *does not* employ an approach that compares the combined total of recurring and nonrecurring charges for UNEs paid over the course of 12 or 24 months for a certain network services in one jurisdiction with combined recurring and nonrecurring charges in another. Globalcom has reviewed numerous FCC 271 orders and not once did the FCC perform or even consider a comparison that combines total recurring and nonrecurring rates paid over a period of time, as SBC-IL suggests, to determine if the rates could be deemed reasonable under TELRIC.

Rather, the FCC has in the past properly examined recurring and nonrecurring rates separately and compares those rates to recurring and nonrecurring rates available in other states

²⁸ Tab 2, ICC Docket No. 01-0662, Phase IA Compliance Aff. of M.Silver on Behalf of SBC-IL, ¶ 13.

²⁹ Tab 2, ICC Docket No. 01-0662, Phase IA Compliance Aff. of M.Silver on Behalf of SBC-IL, ¶ 13.

³⁰ Tab 2, ICC Docket No. 01-0662, Phase IA Compliance Affidavit of M.Silver on Behalf of SBC-IL, at ¶ 15. At the same time, Mr. Silver stated that the data indicate that the charges for EELs in Illinois are higher than comparable charges in Texas and Michigan. *Id.*, ¶ 14.

that it has found to be TELRIC complaint or an appropriate benchmark.³¹ Nonrecurring costs are just that, and generally incurred when service is first provisioned. To the extent that these costs are significantly higher than those in a comparable jurisdiction, that is prima facie evidence that they are not in the ballpark of a TELRIC compliant rate. SBC-IL's specious argument is a transparent attempt to disguise this major flaw in its 271 Application and the fact that its nonrecurring charges for EELs are inflated or otherwise contain significant inefficiencies that are unacceptable under TELRIC.

As Dr. Ankum explains:

to combine the NRCs and the MRCs [i.e., Monthly Recurring Charges] for EELs is to permit serious cross-subsidization between disparate activities and investments.

Further, an observation that SBC's MRCs in IL may be lower relative to those in other states has no impact whatsoever on what appropriate TELRIC based NRCs costs should be. There is no evidence to suggest, nor SBC has pointed to any, that costs that would ordinarily be would be treated as recurring (e.g. in other states) have been shifted into the NRC category in Illinois. In terms of meeting the FCC's requirement that its UNE rates comply with TELRIC, the fact that the MRCs in Illinois are relatively low, therefore, does not justify an above-TELRIC NRC any more than a low port rate would justify a high loop rate.³²

Likewise, the Commission's TELRIC rules reflect the fact that recurring and nonrecurring costs must be recovered based on how the costs are incurred. For instance, FCC Rule 51.507(d) requires that recurring costs be recovered through recurring charges, unless an incumbent LEC proves to the relevant state commission that such recurring costs are *de*

³¹ See, e.g., *Pacific Bell California Order*, ¶¶ 54, 66, & 71 (investigating recurring and nonrecurring rates separately); *Verizon New Jersey Order* ¶¶ 23, 25 & 61-68 (same and adopting Verizon's \$35.00 nonrecurring charge for hot cuts in its second 271 application that Verizon reduced from a range of \$159.76 to \$184.82 it proposed in its original 271 application).

³² Tab 1, Affidavit of Dr. August H. Ankum, AHA-1 at 13.

minimis.³³ For that reason, recurring and non-recurring charges are each evaluated separately in a 271 proceeding.

SBC-IL's interim EEL NRCs are thus unreasonable because they fall outside the range that the reasonable application of TELRIC principles would produce.

C. SBC-IL's EEL NRCs are Over 240% of the Rates SBC-IL Recently Filed in its TELRIC Proceeding Before the ICC. Thus, Even SBC-IL Acknowledges that its EEL Nonrecurring Charges are Not TELRIC Compliant.

On December 24, 2002, SBC-IL filed new tariffs with the ICC that included new TELRIC based recurring and nonrecurring charges for UNEs along with the associated cost support.³⁴ On December 30, 2002, SBC-IL's tariffs were suspended pending investigation in ICC Docket 02-0864.³⁵ That proceeding was, however, abated when the Illinois Governor signed into law the Illinois Public Act 93-0005 on May 9, 2003.³⁶

SBC-IL's December 24, 2002 proposed tariff contained new TELRIC-based nonrecurring EEL rates that are dramatically lower than SBC-IL's interim rates. For instance, the total nonrecurring EEL charges for EEL (4-Wire DS1 Digital Loop to DS1 Dedicated Transport) Combination - Non-Collocated for the initial circuit that are established electronically is

³³ 47 C.F.R. § 51.507(d). Recurring costs are considered *de minimis* under the Commission's rules when the costs of administering the recurring charge would be excessive in relation to the amount of the recurring costs. *Id.*; see *Pacific Bell California Order*, ¶ 67 & n.199.

³⁴ Tab 3, SBC's December 24, 2002 TELRIC Filing.

³⁵ *Illinois Bell Telephone Company Filing to Increase Unbundled Loop and Nonrecurring Rates*, Docket No. 02-0864, Suspension Order (Ill. C.C. Dec. 30, 2002).

³⁶ 220 Ill. Comp. Stat. 5/13-408 & 13-409 (2003), *preliminary injunction granted*, *Voices for Choices v. Illinois Bell Tel. Co.*, No. 03 C 3290, 2003 U.S. Dist. LEXIS 9548 (N.D. Ill. June 9, 2003) (Kocoras, J.) *appeals pending*, Nos. 03-2735 & 03-2766.

\$932.06.³⁷ SBC-IL's \$2,285 interim charges are approximately 2.4 times its December proposed TELRIC-based charges.³⁸ The facts that (1) SBC-IL submitted these rates in December of 2002 as being TELRIC based and (2) the rates are dramatically lower than SBC-IL's interim charges demonstrate that even SBC-IL recognizes that its interim rates are inconsistent with TELRIC principles.

Moreover, Dr. Ankum demonstrates in his affidavit that even the rates that SBC-IL filed in December 2002 are substantially in excess of TELRIC. As Dr. Ankum shows, the new NRCs SBC-IL proposed in December would have been far lower if SBC-IL had properly implemented the numerous downward adjustments required by the ICC.³⁹ Upon correcting and rerunning SBC-IL's nonrecurring cost model as the ICC previously ordered, Dr. Ankum calculated the rates for the 4-Wire Digital Loop to DS1 Level Dedicated Transport EEL to be \$193.57, rather than \$937.58 as SBC-IL proposed.⁴⁰ Based on QSI's recalculation of the NRCs SBC-IL proposed in December 2002, SBC-IL's current interim NRCs for EELs are about *11 times higher* than a what a reasonable application of TELRIC principles would produce.⁴¹

³⁷ See Tab 1, Affidavit of Dr. August H. Ankum, at 4 and AHA-1 at 9-11; *see also* Tab 3, SBC's December 24, 2002 TELRIC Filing, at page 47 (or otherwise referenced as revised ICC No. 20, Part 20, Section 20, Sheet 6.6).

³⁸ See Tab 1, Affidavit of Dr. August H. Ankum, at AHA-1 at 9-11

³⁹ See Tab 1, Affidavit of Dr. August H. Ankum, AHA-1 at 10 (citing *See Illinois Commerce Commission On Its Own Motion, Investigation into the Compliance of Illinois Bell Telephone Company with the Order in Docket 96-0486/0569 Consolidated Regarding the Filing of Tariffs and the Accompanying Cost studies for Interconnection, Unbundled Network Elements and Local Transport and Termination and Regarding End to End Bundling Issues*, Docket No. 98-0396, Order, at 39-42 (Ill. C.C. Oct. 16, 2001)).

⁴⁰ See Tab 1, Affidavit of Dr. August H. Ankum, AHA-1 at 12.

⁴¹ See Tab 1, Affidavit of Dr. August H. Ankum, AHA-1 at 12.

D. SBC-IL's Nonrecurring EEL Charges Do Not Meet the FCC's Standards for Nonrecurring Rates.

In ICC Docket 98-0396, the ICC ordered that SBC-IL's nonrecurring EEL rates go into effect on an interim basis and then in ICC Docket 01-0662 the ICC ordered that they be subject to true-up back to February 6, 2003.⁴² At that time, the ICC emphasized the need to examine and finalize these rates to ensure they are TELRIC compliant; however, it has not done so.⁴³ Therefore, these rates are untried and untested.

The FCC has stated that the mere fact that rates are interim will not generally threaten a section 271 Application, provided that: (1) an interim solution to a particular rate dispute is reasonable under the circumstances; (2) the state commission has demonstrated its commitment to the Commission's pricing rules; and (3) provision is made for refunds or true-ups once permanent rates are set.⁴⁴ The Commission has, however, also made it clear that with the

⁴² *ICC Order on Reopening*, at 11; *ICC 271 Order* at ¶ 778 (stating that Ameritech must amend its tariffs so as to include language providing for true-up reconciliation effective as of the date of this [Phase I] order," which was February 6, 2003).

⁴³ *ICC Order on Reopening*, at 11 .

⁴⁴ See *Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., Verizon West Virginia Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, WC Docket No. 02-384, Memorandum Opinion and Order, FCC 03-57, 2003 WL 1339419, Appendix F, ¶ 23 (rel. Mar. 19, 2003) ("*Verizon MD/D.C./WVA Order*") (citing *SWBT Texas Order*, ¶ 88 ; *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 258 (1999) ("*Bell Atlantic New York Order*") (explaining the Commission's case-by-case review of interim prices), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000)). In the *Bell Atlantic New York Order*, the FCC addressed the issue of interim rates and created a limited exception for use of interim rates. The Commission noted:

[w]e believe that this question should be addressed on a case-by-case basis. If the uncertainty caused by the use of interim rates can be minimized, then it may be appropriate, at least for the time being, to approve an application based on the interim

passage of time, states will have had sufficient time to complete these proceedings and it “will, therefore, become more reluctant to continue approving section 271 applications containing interim rates.”⁴⁵ The Commission has reasoned that it would “not be sound policy for interim rates to become a substitute for completing these significant proceedings.”⁴⁶ To the extent the FCC has approved a 271 application that includes interim rates, the FCC has been more comfortable in doing so when the interim rates are “less than” the rates offered in a benchmark state.⁴⁷

With respect to SBC-IL’s NRCs for EELs and the FCC factors referenced above, the interim solution does not meet the Commission’s requirement that it be reasonable under the circumstances. The interim rates, as discussed above, are patently unreasonable by TELRIC

rates contained in the relevant tariff. Uncertainty will be minimized if the interim rates are for a few isolated ancillary items, permanent rates that have been established are in compliance with our rules, and the state has made reasonable efforts to set interim rates in accordance with the Act and the Commission’s rules.

Bell Atlantic New York Order, ¶ 258.

⁴⁵ *Pacific Bell California Order*, Appendix C, ¶ 24.

⁴⁶ *Pacific Bell California Order*, Appendix C, ¶ 24. Prior to making these recent pronouncements, the Commission was not as opposed to interim rates and stated that it recognized in the FCC TX 271 Order the significance of interim rates for purposes of adjudicating a section 271 application. The Commission concluded that

the section 271 process could not function as Congress intended if we adopted a general policy of denying any section 271 application accompanied by unresolved pricing and other intercarrier disputes. Our experience has demonstrated that, at any given point in time at which a section 271 application might be filed, the rapidly evolving telecommunications market will have produced a variety of unresolved, fact-specific disputes concerning the BOC’s obligations under sections 251 and 252. BOCs and their competitors can be expected to take opposite positions in those disputes, and the adjudicated resolution ultimately will often fall somewhere in between the positions of the opposing parties. If uncertainty about the proper outcome of such disputes were sufficient to undermine a section 271 application, such applications could rarely be granted. Congress did not intend such an outcome.

SWBT Texas Order, ¶ 87.

standards and 13.2 times the rates offered in a benchmark state such as California (\$2,285.85, as compared with \$173.10). Because of this, SBC-IL's 271 Application is defective and should be denied.

Significantly, SBC's California NRCs appear to reflect far more efficiently incurred costs than the costs supposedly incurred by SBC-IL. The nonrecurring costs that SBC-IL experiences in provisioning EELs should reflect efficiencies similar to those experienced by SBC in California: SBC committed to the FCC that the "best practices" from among its component companies would be followed company-wide.⁴⁸ The dramatic difference between SBC's costs in California and its supposed costs in Illinois is strong evidence that SBC has not followed this "best practices" approach in Illinois. Moreover, while it is true that labor rates may differ from state to state, labor rates in Illinois are not greatly different from labor rates in California.⁴⁹ Further, whatever labor rate differences may exist, they in no way could explain the vast discrepancies and variations in the NRCs.⁵⁰

Globalcom understands that setting rates is an on-going process and state commissions will periodically revisit their decisions. When, however, as is the case here, permanent TELRIC-compliant rates have not been established, and the rates are not at all reasonable under TELRIC standards, the "temporary" nature of the rates is not only problematic but fatal to the ability of

⁴⁷ *Pacific Bell California Order*, ¶ 48.

⁴⁸ *See Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶¶ 154, 325, 423 (1999) ("*SBC/Ameritech Merger Order*") (subsequent history omitted).

⁴⁹ *See* Tab 1, Affidavit of Dr. August H. Ankum, AHA-1 at n.5.

⁵⁰ *See* Tab 1, Affidavit of Dr. August H. Ankum, AHA-1 at n.5.

Globalcom and other CLECs to compete during the interim period. SBC-IL's Application puts the cart before the horse. Pro-competitive TELRIC rates should be established first, *before* the grant of a 271 application. Indeed, the fact that SBC-IL's excessive and unreasonable rates are interim provides little hope of future compliance with Checklist Item 2 particularly since SBC-IL will have no incentive to make any future concessions once it obtains Section 271 authority.

With the newly enacted Illinois legislation (although recently overturned⁵¹) and SBC-IL's tireless lobbying effort that got 220 Ill. Comp. Stat 5/13-408 & 13-409 passed so quickly, SBC-IL has made it abundantly known that it does not want the ICC to have full control over the application of the FCC's TELRIC pricing rules. Because of this, SBC-IL has made it very difficult for the ICC to complete the nonrecurring UNE cost proceeding and therefore it is SBC-IL's own fault that permanent nonrecurring rates for EELs have not been established. Given this, the Commission should not approve SBC-IL's 271 Application at this time⁵² because it would "not be sound policy for interim rates to become a substitute for completing these significant proceedings."⁵³

II. THE GRANT OF SBC-IL'S APPLICATION WOULD NOT BE IN THE PUBLIC INTEREST

In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.⁵⁴ Compliance with the competitive checklist is itself a strong indicator that long distance entry is

⁵¹ *Voices for Choices v. Illinois Bell Tel. Co.*, No. 03 C 3290, 2003 U.S. Dist. LEXIS 9548 (N.D. Ill. June 9, 2003) (Kocoras, J.) *appeals pending*, Nos. 03-2735 & 03-2766.

⁵² *See Verizon MD/D.C./WVA Order*, Appendix F, ¶ 24.

⁵³ *Verizon MD/D.C./WVA Order*, Appendix F, ¶ 24.

⁵⁴ 47 USC §271(d)(3)(C).

consistent with the public interest.⁵⁵ As Commission stated, “This approach reflects the Commission’s many years of experience with the consumer benefits that flow from competition in telecommunications markets.”⁵⁶ Nonetheless, the Commission recognizes that the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.⁵⁷

Thus, the Commission views the public interest requirement as “an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would *frustrate* the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected.”⁵⁸ Among other things, the Commission “may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.”⁵⁹ Another potentially relevant factor to the analysis is “whether the Commission has sufficient assurance that markets will remain open

⁵⁵ *Pacific Bell California Order*, Appendix C, ¶ 70.

⁵⁶ *Pacific Bell California Order*, Appendix C, ¶ 70.

⁵⁷ *Pacific Bell California Order*, ¶ 147 & Appendix C, ¶ 70. In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. *Id.* at Appendix C, n.243 (citing *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 360-66 (1997) (“*Ameritech Michigan Order*”) and 141 Cong. Rec. S7971, S8043 (June. 8, 1995)).

⁵⁸ *Pacific Bell California Order*, ¶ 147 & Appendix C, ¶ 71 (emphasis supplied).

⁵⁹ *Pacific Bell California Order*, Appendix C ¶ 71 (citing *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis may include consideration of “whether approval . . . will foster competition in all relevant telecommunications markets”)).

after grant of the application.”⁶⁰ While no one factor is dispositive in this analysis, the Commission has maintained that the “overriding goal is to ensure that nothing undermines the conclusion, based on the Commission’s analysis of checklist compliance, that markets are open to competition.”⁶¹

A. SBC-IL’s Nonrecurring EEL Rates are Not Pro-Competitive and Discourage Competitive Entry.

When the Commission has approved 271 Applications with interim rates, the Commission has only done so when the rates are “pro-competitive” and will “encourage competitive entry” until such time as the state commission reviews and investigates the rate.⁶² In this case, SBC-IL’s rates do the exact opposite.

Indeed, apart from the fact that SBC-IL’s nonrecurring EEL rates are not TELRIC-based and not within any zone of reasonableness, SBC-IL’s interim nonrecurring EEL charges of \$2,285 (for 4-Wire Digital (DS1) Loop to DS1 dedicated transport - uncollocated) will affect the facilities-based business plan of Globalcom (and any other CLEC deploying a similar EELs-based business plan) in a significantly adverse manner. As explained in Tabs 4 and 5, SBC-IL previously confirmed in writing to Globalcom that the total nonrecurring charges associated with a new 4-Wire Digital (DS1) Loop to DS1 dedicated transport EEL combinations- non-collocated would be \$661.02.⁶³ This interpretation of SBC-IL’s own tariffs was agreed to both in writing

⁶⁰ *Pacific Bell California Order*, Appendix C, ¶ 71.

⁶¹ *Pacific Bell California Order*, Appendix C ¶ 71.

⁶² *See, e.g., Pacific Bell California Order*, ¶¶ 37-38, 49.

⁶³ Tab 4, Affidavit of Greg Robertson at 7; Tab 5, Factual Background of EEL NRCs SBC Agreed to Charge Globalcom Based on SBC’s Original Interpretation of its Tariff, at 4.

and orally with senior management at SBC-IL.⁶⁴ As SBC-IL was aware at the time, Globalcom relied upon that joint agreement to develop and execute its business plan.⁶⁵

SBC-IL has now reinterpreted its tariff and is demanding that Globalcom pay \$2,286.21,⁶⁶ rather than \$661.02 in total nonrecurring charges for new circuits ordered.⁶⁷ Globalcom is shocked and amazed at SBC-IL's request because such charges will impede, if not doom, Globalcom's ability to compete with SBC-IL using its existing facilities-based market entry strategy that relies on competitively priced EELs.⁶⁸ As the attached affidavit of Greg Robertson explains, Globalcom will not be able to maintain operations in Illinois under its current business plan if SBC-IL is permitted to assess \$2,286 in nonrecurring EEL charges.⁶⁹

Significantly, Globalcom would never have moved forward with such a market-entry strategy in the face of an EEL NRC of \$2,286.⁷⁰ Given the competition it faces from SBC-IL in the DS1 market, such NRCs cannot be passed along to Globalcom's DS1 end user customers since they expect Globalcom to waive such charges.⁷¹ Therefore, Globalcom must absorb such

⁶⁴ Tab 4, Affidavit of Greg Robertson at 7; Tab 5, Factual Background of EEL NRCs SBC Agreed to Charge Globalcom Based on SBC's Original Interpretation of its Tariff, at 4.

⁶⁵ Tab 4, Affidavit of Greg Robertson at 7; Tab 5, Factual Background of EEL NRCs SBC Agreed to Charge Globalcom Based on SBC's Original Interpretation of its Tariff, at 4.

⁶⁶ The total NRCs quoted by SBC is \$.36 higher than the total tariff charges of \$2,285.85. SBC appears to have transposed the tariffed loop carrier connection charge of \$185.48 to \$185.84 in its July 22, 2003 Email to Globalcom. See Tab 5, Factual Background of EEL NRCs SBC Agreed to Charge Globalcom Based on SBC's Original Interpretation of its Tariff, at 5 & Attachment 11.

⁶⁷ Tab 4, Affidavit of Greg Robertson at 10.

⁶⁸ See Tab 4, Affidavit of Greg Robertson at 11.

⁶⁹ See Tab 4, Affidavit of Greg Robertson at 11-12.

⁷⁰ See Tab 4, Affidavit of Greg Robertson at 11-12.

⁷¹ See Tab 4, Affidavit of Greg Robertson at 11-12.

charges if it wants to be a competitive facilities-based provider; however, Globalcom cannot shoulder this \$2,286 cost.⁷²

In addition the mere fact the rates are interim and subject to true-up is not a consolation. If the reasonable range of nonrecurring TELRIC rates for these services is around \$173.00 (i.e., California benchmark rates, as discussed above), Globalcom should not have to drain its limited capital resources (and cannot obtain new investment capital) paying 12 times more than what is reasonable until these nonrecurring charges are investigated and the anticipated true-up occurs, which could be a long time from now.⁷³ Globalcom needs the full extent of its capital resources now so that it can obtain additional facilities and resources needed to grow its business and compete in the marketplace.⁷⁴ Obviously, SBC-IL would use all of its powers to avoid any future nonrecurring cost proceeding that investigates these rates, as it has successfully done in the past. SBC fully recognizes that by unreasonably tying up the cash reserves of Globalcom and other CLECs in this manner, SBC is thereby limiting Globalcom's ability to compete and grow.

Moreover, investors and the capital markets disfavor interim rates, especially unreasonable ones. Indeed, to remain a viable corporate entity by investor standards and in light of the fact that Globalcom cannot pass its total service establishment costs (which include SBC-IL EEL NRCs) on to its DS1 end user customers, Globalcom cannot expect to attract investment capital by advising investors that although its business plan is unprofitable at today's rates,

⁷² See Tab 4, Affidavit of Greg Robertson at 11-12.

⁷³ See Tab 4, Affidavit of Greg Robertson at 12.

⁷⁴ See Tab 4, Affidavit of Greg Robertson at 12.

Globalcom expects, at some time in the distant future, to receive a refund as a result of true-up.⁷⁵

The prospect of a true-up in the distant future is highly speculative and will not permit CLECs to obtain funding with which to compete with SBC-IL.

Apart from the above, the FCC should recognize that having unreasonable EEL NRCs undermines the rationale behind the FCC's decision to not require unbundled switching.⁷⁶ This decision is said to be predicated on the assumption that CLECs are not impaired by not having access to switching because they can provide their own switching cost-effectively through the use of EELs. Such an assumption fails, however, when the EEL NRCs are unreasonable. As a result, consumers will not benefit from competitive pricing and options that a CLEC could provide to them with its own switching. Indeed, if EEL NRCs are unreasonably priced, consumers will suffer as a general matter because they will only be able to obtain services that are largely limited to what the BOCs offer through their switches and will not be able to obtain more competitive, customized, and flexible service offerings that CLECs could provision through their own switches.

Consequently, SBC-IL's EEL NRCs serve as an insurmountable barrier to entry that will impede Globalcom's ability to compete in the Illinois marketplace as a facilities-based carrier. Given these circumstances, SBC-IL Illinois' entry into the long distance market is contrary to the public interest.⁷⁷ If the Commission grants SBC-IL's 271 Application with these non-TELRIC

⁷⁵ See Tab 4, Affidavit of Greg Robertson at 12.

⁷⁶ See FCC Press Release, FCC Adopts New Rules for Network Unbundling Obligations of Incumbent Local Phone Carriers, at 2 and Attachment at 1 (Feb. 20, 2003).

⁷⁷ See *Pacific Bell California Order*, ¶¶ 37-38, 48, Appendix C, ¶ 71 (citing *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, ¶ 360 (the public interest analysis may include consideration of "whether approval . . . will foster competition in all relevant telecommunications markets"))).

based and unreasonable rates, the Commission can be assured that the markets will not remain open for facilities-based carriers such as Globalcom, as the Act envisions.

B. SBC-IL's Anti-Competitive Practices With Respect to EELs Exacerbate the Barriers to Competitive Entry

In addition to SBC-IL's exorbitantly high NRC EEL charges, SBC-IL's anti-competitive practices are acting as a further barrier to entry. These anti-competitive practices cause CLECs to expend valuable time and resources and thus prevent CLECs from having a meaningful opportunity to compete. The Commission has stated that it will not be satisfied that the public interest standard has been met unless there is an adequate factual record that the "BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."⁷⁸ However, as explained below, SBC-IL failed in this regard and its Application should be rejected.

For instance, SBC-IL has not been billing Globalcom the correct amount for EELs. In particular, SBC-IL has been charging Globalcom \$1,663.08 in nonrecurring charges rather than the \$661.02 it agreed to assess for new 4-Wire Digital (DS1) Loop to DS1 dedicated transport EEL combinations.⁷⁹ Through these tactics, SBC-IL is making it terribly difficult for Globalcom to compete based on SBC-IL's own inability to interpret its own tariff and maintain that interpretation. Because SBC-IL is now stating that the nonrecurring charges amount to \$2,286.21, Globalcom is faced with a serious dispute with SBC-IL that will come at a heavy price to Globalcom (in that Globalcom will have to expend outside counsel fees along with precious time and resources of its management to resolve the issue). Instead of being consistent

⁷⁸ *Ameritech Michigan Order*, ¶ 386.

⁷⁹ Tab 5, Factual Background of EEL NRCs SBC Agreed to Charge Globalcom Based on SBC's Original Interpretation of its Tariff, at 3-5.

in its tariff interpretation, SBC-IL's conduct forces CLECs to expend time on issues such as these.

This is precisely the type of anti-competitive leveraging of local monopoly power that the public interest standard was designed to address. Section 271 authority should be a sign that a market is open and functioning properly. SBC-IL's practices demonstrate the exact opposite. SBC-IL's conduct provides no assurance of future compliance, and, in fact, suggests a future of non-compliance with Section 271 standards. The anti-competitive practices of SBC-IL further only SBC-IL's interest, and not the public interest, and warrant denial of the Application under the public interest standard. Until SBC-IL can demonstrate a period of sustained pro-competitive practices, or at very least competitively-neutral practices, the Commission should withhold granting SBC-IL's Section 271 authority.

III. SBC-WI'S NONRECURRING RATES FOR EELS ARE NOT TELRIC COMPLIANT OR IN THE PUBLIC INTEREST.

For reasons similar to those discussed above and presented in Dr. Ankum's affidavit regarding SBC-IL's NRCs for EELs, SBC-WI's NRCs for EELs are not within the range that a reasonable application of TELRIC principles would produce. Indeed, the total NRCs SBC-WI charges for a 4-Wire DS1 Digital Loop to DS1 Dedicated Transport Combination – Uncollocated is \$2,159.08.⁸⁰ Similar to the above rate disparity between SBC-IL and SBC-CA NRCs for EELs, SBC-WI's total NRCs are approximately 12.5 and 4.90 times the amount SBC charges in California and Texas, respectively. Significantly, the Wisconsin Public Service Commission has

⁸⁰ See, e.g., Tab 1, Affidavit of Dr. August H. Ankum at 3-4 and AHA-1 at 3-12 (the workpaper for Wisconsin attached to AHA-1 explains the breakdown of this total cost and also provides a hyperlink to the specific tariff references associated with each specific rate element); P.S.C. of W. 20, Part 19, Section 22, Sheet 5; P.S.C. of W. 20, Part 19, Section 2, Sheet 36; and P.S.C. of W. 20, Part 19, Section 12, Sheet 27-28.

not investigated many of the rates elements that compose this total amount and has stated that “it is reasonable to have the final determinations regarding the application of the Commission’s methodologies to take place in the context of negotiation and/or arbitration of interconnection agreements per 47 U.S.C. §§ 251 and 252.”⁸¹ Because of this, the FCC must rely on a benchmark analysis to determine if SBC-WI’s EEL NRCs could be deemed reasonable under TELRIC. Such an analysis demonstrates the excessive nature of the rates. Therefore, SBC-WI’s Section 271 Application should be denied for reasons similar to those discussed above, with respect to SBC-IL.⁸²

IV. TO CURE THE DEFECTS IN SBC-IL’S AND SBC-WI’S 271 APPLICATION, SBC-IL AND SBC-WI SHOULD FILE REVISED RATES THAT MIRROR THE RATES OFFERED IN CALIFORNIA IMMEDIATELY.

In light of the above and the fatal infirmities associated with SBC-IL’s and SBC-WI’s EEL NRCs, the Commission should deny SBC-IL’s and SBC-WI’s 271 Applications unless SBC submits rates in Illinois and Wisconsin that mirror the EEL NRCs that SBC charges in California, *e.g.*, \$173.10, which the Commission has found to be TELRIC compliant. Significantly, these California rates, as discussed above, come very close to the rates which QSI estimated (\$193.57) for Illinois.⁸³ Furthermore, SBC adopted the California NRCs in Nevada

⁸¹ See *Investigation Into SBC Wisconsin’s Unbundled Network Elements*, Docket No. 6720-TI-161, UNE Compliance Order, at 9, 16-19 and Appendix B at 2, & 9-10 (Wis. P.S.C. July 9, 2003).

⁸² See Tab 1, Affidavit of August H Ankum, at 3 and AHA-1 at 3.

⁸³ As previously mentioned, to the extent the FCC has approved a 271 application that includes interim rates, the FCC is more comfortable doing so when the interim rates are “less than” the rates offered in a benchmark state. See, *e.g.*, *Pacific Bell California Order*, ¶ 48.

and the Commission recently found that acceptable during its review of SBC's 271 application for Nevada.⁸⁴

Given the limited nature of such a filing, such an approach by SBC-IL and SBC-WI would warrant a waiver of the "complete-as-filed" requirement. The FCC has granted such waivers by BOCs which sought to lower certain UNE rates and mirror the rates offered in other states during the Commission's review of their respective 271 Applications when it was evident that certain rates in their application were not TELRIC-compliant.⁸⁵

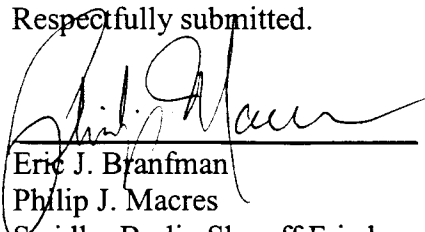
⁸⁴ See *In the Matter of Application of SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization to Provide In-Region, InterLATA Services in Nevada*, WC Docket No. 03-10, Memorandum Opinion and Order, FCC 03-80, ¶¶ 33 & 36 (rel. Apr. 14, 2003).

⁸⁵ See, e.g., *Application by Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in Rhode Island*, CC Docket No. 01-324, Memorandum Opinion and Order, 17 FCC Rcd 3300, ¶¶ 7-13 (2002) ("*Verizon Rhode Island Order*"); *Application by Verizon Virginia Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide in-Region, InterLATA Services in Virginia*, WC Docket No. 02-214, Memorandum Opinion and Order, 17 FCC Rcd 21880, ¶¶ 80-85 (2002) ("*Verizon Virginia Order*"); *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware*, WC Docket No. 02-157, FCC 02-262, Memorandum Opinion and Order, FCC 02-262, ¶¶ 11-16 (2002) ("*Verizon New Hampshire/Delaware Order*"); *SWBT Kansas/Oklahoma Order*, ¶¶ 22-27; See *Pacific Bell California Order*, ¶¶ 26-31; *Verizon MD/D.C./WVA Order*, ¶¶ 60-65.

V. CONCLUSION

For the foregoing reasons, Globalcom respectfully requests that the Commission deny SBC-IL's and SBC-WI's 271 Application should SBC not cure the deficiencies in its filing, as requested herein.

Respectfully submitted.



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